

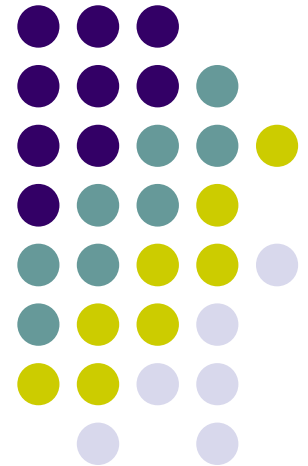
Document delivery

- the legal situation in some countries -

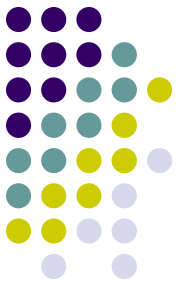
V. Conference on Internet Document Delivery
and Inter-library cooperation

Bozen 22 May 2008

Dr. Harald Müller



Human Right for Information



■ Art. 19 Universal Declaration of Human Rights

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

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Title: Interlending and document supply: a review of the recent literature:
 59

Author(s): Mike McGrath

Journal: Interlending & Document Supply

ISSN: 0264-1615

Year: 2007 **Volume:** 35 **Issue:** 2 **Page:** 102 - 114

DOI: 10.1108/02641610710754114

Publisher: Emerald Group Publishing Limited

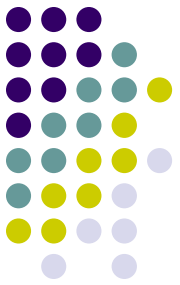
Abstract: Purpose – The purpose of this article is to provide a review of
 the most recent literature concerning document supply and related
 matters.

Design/methodology/approach – The article covers the reading of over
 150 journals as well as monographs, reports and websites.

Findings – That the fundamental debate on the direction of scholarly
 publishing continues intensely and that opposition is growing to DRM
 constraints. Electronic books remain a small minority market but the mass
 digitisation of books is proceeding apace. Open access continues to grow
 but with widely differing views on its impact – the publishers start to fight
 back.

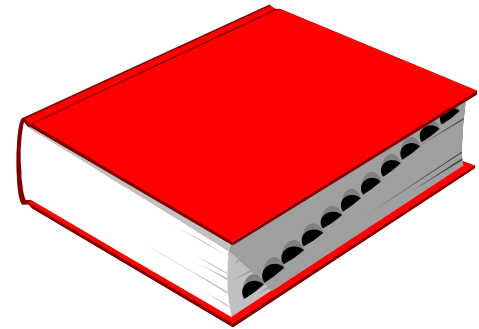
Originality/value – The paper represents a useful source of information
 for librarians and others interested in document supply and related

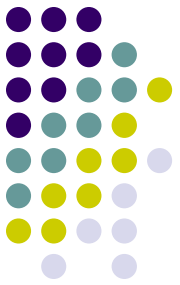




What are libraries for?

- Aim of a library:
 - To collect media
 - To catalogue the items
 - To store and preserve them
 - **To give access to everybody**
- Libraries are not cemeteries for media, but the most reliable source of information

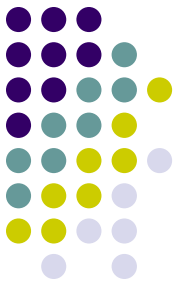




What is document supply?

- Tim McGrath / British Library:
„The process of obtaining material not readily accessible locally.“
- Interlibrary loan ILL
- **IFLA:** International Lending and Document Delivery:
Principles and Guidelines for Procedure *(First agreed by IFLA 1954 / Major revision 1978, modified 1987 / Major revision 2001)*
- In times of analog copies = a satisfactory service
- Original ≠ copy, because of loss of quality

Things have changed (Bob Dylan)

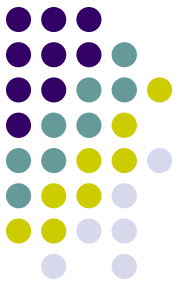


1. Digital reproduction = no loss of quality
2. Better word >>> cloning
3. Publishers started commercial document delivery services
4. Libraries are labeled as competitors
5. Document supply became topic of court cases



Legal arguments

- **Publishers:** „Electronic document supply is our genuine business, libraries are competitors“.
- **Libraries:** „All kind of document supply is genuine resource sharing, served for centuries by libraries“.
- **Factual conflict = legal conflict**



Legal conflict solutions

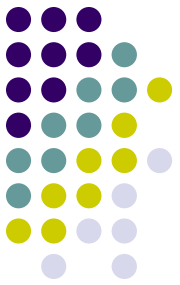
Court cases

Licences

Statutory laws

Open access



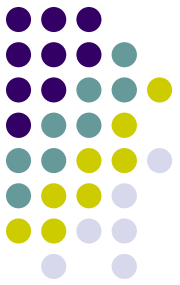


Court case: Canada

CCH Canadian Ltd. v. Law Society of Upper Canada, [2004] 1 S.C.R. 339, 2004 SCC 13

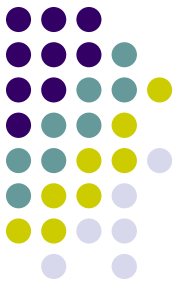
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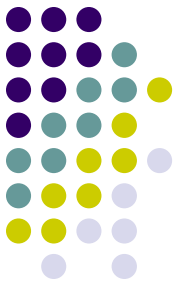
Court case: Germany

1. TIB case 1999 (allows document supply)
2. Subito case (*Subito = document delivery service of research libraries in Germany, Austria and Switzerland*)
 - **The SUBITO Case in Germany: Implications for Libraries** (about decision of first instance)
<http://www.ifla.org/IV/ifla72/papers/089-Mueller-en.pdf>
 - **Subito case in Germany - decision of the Court of Appeal in Munich (OLG München)**
In: EBLIDA News Nr. 9-10 June 2007
<http://www.eblida.org/uploads/eblida/1/1181809711.pdf>



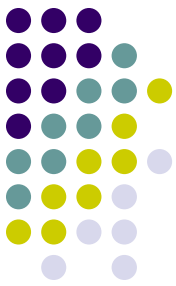
Licences

- Single or collective licence
- Will overrule a statutory law, cf. Sec. 108 f 4
US copyright law
- Can be full of restrictions



National copyright laws

- Italy
- Canada
- Australia
- USA
- United Kingdom
- Germany

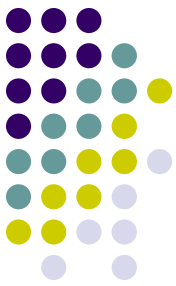


Legge 22 aprile 1941 n. 633

Protezione del diritto d'autore e di altri diritti connessi al suo esercizio

Art. 68

1. E' libera la riproduzione di singole opere o brani di opere per uso personale dei lettori, fatta a mano o con mezzi di riproduzione non idonei a spaccio o diffusione dell'opera nel pubblico.
2. E' libera la fotocopia di opere esistenti nelle biblioteche accessibili al pubblico o in quelle scolastiche, nei musei pubblici o negli archivi pubblici, effettuata dai predetti organismi per i propri servizi, senza alcun vantaggio economico o commerciale diretto o indiretto.
3. Fermo restando il divieto di riproduzione di spartiti e partiture musicali, è consentita, nei limiti del quindici per cento di ciascun volume o fascicolo di periodico, escluse le pagine di pubblicità, la riproduzione per uso personale di opere dell'ingegno effettuata mediante fotocopia, xerocopia o sistema analogo.
4. I responsabili dei punti o centri di riproduzione, i quali utilizzino nel proprio ambito o mettano a disposizione di terzi, anche gratuitamente, apparecchi per fotocopia, xerocopia o analogo sistema di riproduzione, devono corrispondere un compenso agli autori ed agli editori delle opere dell'ingegno pubblicate per le stampe che, mediante tali apparecchi, vengono riprodotte per gli usi previsti nel comma 3. La misura di detto compenso e le modalità per la riscossione e la ripartizione sono determinate secondo i criteri posti all'art. 181-ter della presente legge. Salvo diverso accordo tra la SIAE e le associazioni delle categorie interessate, tale compenso non può essere inferiore per ciascuna pagina riprodotta al prezzo medio a pagina rilevato annualmente dall'ISTAT per i libri.
5. Le riproduzioni per uso personale delle opere esistenti nelle biblioteche pubbliche, fatte all'interno delle stesse con i mezzi di cui al comma 3, possono essere effettuate liberamente nei limiti stabiliti dal medesimo comma 3 con corrispondenza di un compenso in forma forfetaria a favore degli aventi diritto di cui al comma 2 dell'articolo 181-ter, determinato ai sensi del secondo periodo del comma 1 del medesimo articolo 181-ter. Tale compenso è versato direttamente ogni anno dalle biblioteche, nei limiti degli introiti riscossi per il servizio, senza oneri aggiuntivi a carico del bilancio dello Stato o degli enti dai quali le biblioteche dipendono. I limiti di cui al comma 3 non si applicano alle opere fuori dai cataloghi editoriali e rare in quanto di difficile reperibilità sul mercato.
6. E' vietato lo spaccio al pubblico delle copie di cui ai commi precedenti e, in genere, ogni utilizzazione in concorrenza con i diritti di utilizzazione economica spettanti all'autore.



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Canada: Copyright Act (R.S., 1985, c. C-42)

Act current to June 2nd, 2007

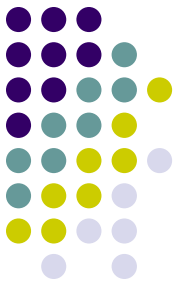


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- (a) a scholarly, scientific or technical periodical; or
- (b) a newspaper or periodical, other than a scholarly, scientific or technical periodical, if the newspaper or periodical was published more than one year before the copy is made.

Canada: Copyright Act (R.S., 1985, c. C-42)

Act current to June 2nd, 2007

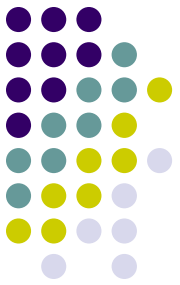


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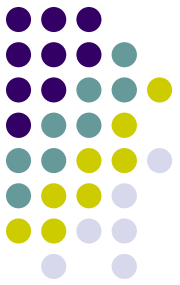
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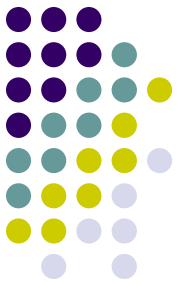
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- (b) communicate the article or work.

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17 USC 108, 2004

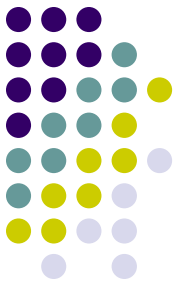


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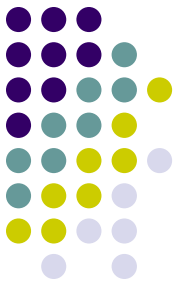
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Electronic document delivery allowed

United Kingdom:

Copyright, Designs and Patents Act 1988



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United Kingdom:

Copyright, Designs and Patents Act 1988

39.-(1) Copying by librarians: parts of published

works

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41.-(1) Copying by librarians: supply of copies to other libraries

43.-(1) Copying by librarians or archivists: certain unpublished works.

Electronic document delivery allowed?

Germany:

Copyright law amendment, Jan. 2008



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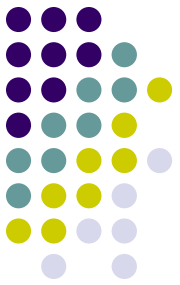
Open access



- Threat to publishers

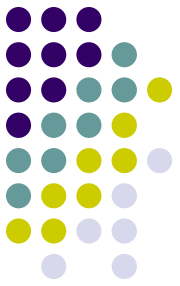
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- Libraries and open access: threat or salvation?



Conclusion

- Global comparative law view shows a **trend**
- To adjust document delivery through
statutory regulation = Copyright law
- But also to give space for **licence** contracts
- Mostly for **electronic** document delivery



What can libraries do now?

- Give information about legal situation in other countries to your government
- Make this information publicly available
- Use this information for lobbying
- That's

Freedom of Information